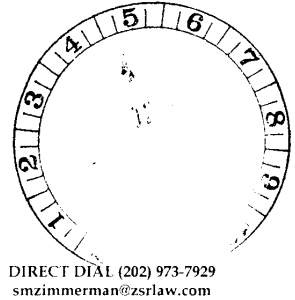


ZUCKERT SCOUTT & RASENBERGER, L.L.P.

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SCOTT M. ZIMMERMAN

November 12, 2004

BY HAND DELIVERY

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office Proceedings
NOV 12 2004
Part of
Public Record

**Re: Docket No. AB-512X, Sierra Pacific Industries – Abandonment Exemption –
In Amador County, CA, and
Docket No. AB-880X, SierraPine – Discontinuance Exemption – In
Amador County, CA**

2123-24

2123-32

Dear Secretary Williams:

Enclosed for filing on behalf of petitioners Sierra Pacific Industries and SierraPine in each of the above-referenced cases are the original and 10 copies of their Petition For Exemption. Also enclosed is a 3.5" floppy disk containing the text of the petition, Exhibit B thereto (verified statement of Laine Atkinson) and Exhibit D thereto (draft Federal Register notice). Finally, we also enclose two checks, each in the amount of \$5,000, representing the filing fees for the abandonment and discontinuance proceedings.

Please contact us if you have any questions.

Sincerely,

Richard A. Allen
Scott M. Zimmerman

Attorneys for SPT and SierraPine

Enclosures

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

Vernon A. Williams, Esq.
November 12, 2004
Page 2

cc (w/enc.):

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
415-703-2782

Chief Projects Analyst
Office of Planning and Research
P.O. Box 3044
Sacramento, California 95812

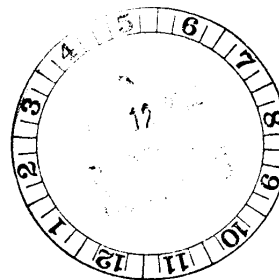
SDDCTEA
Attn: Railroads For National Defense
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250-0003

Chief of National Recreation and Trails
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, D.C. 20240-0001

Rose-Michele Weinryb, Esq.
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, D.C. 20036-1609

Before the
Surface Transportation Board



STB Docket No. AB-512X - 212524

SIERRA PACIFIC INDUSTRIES—ABANDONMENT EXEMPTION—
IN AMADOR COUNTY, CA

STB Docket No. AB-880X - 212532

SIERRAPINE—DISCONTINUANCE EXEMPTION—
IN AMADOR COUNTY, CA

PETITION FOR EXEMPTION

FILED

Richard A. Allen
Scott M. Zimmerman
ZUCKERT SCOUTT & RASENBERGER
888 Seventeenth Street NW
Suite 700
Washington DC 20006
(202) 298-8660

Attorneys for SierraPine and Sierra Pacific
Industries.

Dated: November 12, 2004

Before the
Surface Transportation Board

STB Docket No. AB-512X

SIERRA PACIFIC INDUSTRIES—ABANDONMENT EXEMPTION—
IN AMADOR COUNTY, CA

STB Docket No. AB-880X

SIERRAPINE—DISCONTINUANCE EXEMPTION—
IN AMADOR COUNTY, CA

PETITION FOR EXEMPTION

Sierra Pacific Industries (“SPI”) and SierraPine (collectively, “Petitioners”) hereby petition the Board, pursuant to 49 U.S.C. §10502, to grant exemptions from 49 U.S.C. §10903 in order to permit SierraPine to discontinue operations over a 12-mile line of railroad between Martell and Ione in Amador County, California and to permit SPI to abandon the line.

PROPOSED TRANSACTIONS

SierraPine proposes to discontinue operations over its entire line of railroad between Milepost 0.0 at Ione, CA and Milepost 12.0 at Martell, CA (hereafter, “the Line”) and associated yard and spur trackage at Martell, which it leases from SPI, and SPI proposes to abandon the Line. The Line is approximately 12 miles in length and is

located entirely in Amador County, CA, traversing U.S. Postal Service Zip Codes 95640 and 95654. SierraPine ceased operations over the Line on June 3, 2004 due to safety concerns and because the economics of operating the Line could not justify the expense of repairing and maintaining the Line as required for safe operation, and formally embargoed the Line on July 7, 2004. A map of the Line is attached as Exhibit A.

Based on information in Petitioners' possession, the Line does not contain any federally granted right-of-way. Any documentation in Petitioners' possession will be made available promptly to those requesting it.

STATEMENT OF FACTS

As described more fully in the attached verified statement of Laine Atkinson (Exhibit B), the Line was constructed in 1906 to connect the town of Martell to the main line of the Central Pacific Railroad (now the Union Pacific Railroad Company ("UP")) some ten miles to the west (and 1200 feet below Martell) at Ione. It was first operated as the Ione and Eastern Railroad, and it carried gold ore and firebricks west from Martell and passengers, mail, groceries, clothing and animal feed east from Ione. It later operated under the name of Amador Central Railroad and was owned and operated by a series of lumber companies, including, from 1988 to 1997, Georgia Pacific Corporation.

In 1997, the Line, including associated spur and yard tracks was acquired by SPI, a forest products company. *See Sierra Pacific Industries – Acquisition and Operation Exemption – Amador Central Railroad*, STB Finance Docket No. 33378 (served April 9, 1997). At that time SPI also acquired from Georgia Pacific a mill complex located near the Martell end of the Line and connected to the Line via a spur at milepost 11.6. All mill operations except the particleboard plant were shut down.

In May 1997, SPI sold the particleboard plant to SierraPine, a California limited partnership among Emmerson Investments, Inc. a California corporation, a general partner, Rockland Timber Co. (a Delaware corporation), a general partner, and the principals of SPI and Timber Products Company. SierraPine also entered into an agreement with SPI to lease and operate the Line and associated yard and spur tracks, primarily to transport its finished products from that plant (now known as SierraPine's "Ampine" plant) at Martell to the connection with the UP at Ione. *See SierraPine—Lease and Operation Exemption—Sierra Pacific Industries*, STB Docket No. 33679 (served December 11, 1998). On January 16, 2004, SierraPine and SPI entered into an Amendment to Lease Agreement extending the initial 5-year term of the lease an additional five years.

SierraPine operated the Line from 1999 to June 3, 2004, sometime referring to its rail operations as the Amador Foothills Railroad. During that time, virtually all of the traffic carried over the line was SierraPine's own particleboard panels and shelving stock, which was transported outbound from its Ampine plant. From time to time SierraPine transported over the Line a few carloads of inbound particleboard to its Ampine plant. One other manufacturing facility, a fiberboard plant operated by Landmark Trim USA ("Landmark"), also is connected to the Line via the spur at MP 11.6; on occasion, as an accommodation, SierraPine would transport an inbound car or two of fiberboard to Landmark (or to Landmark's predecessor at the facility, known as Fibreform). The total

carloads transported over the Line from 1999 through 2004 are shown below:¹

	1999	2000	2001	2002	2003	2004	Total
Ampine	193	360	484	432	484	117	2070
Fibreform	14	3					17
Springfield		6	16	1			23
Landmark			4	81	77	21	183
Totals	207	369	504	514	561	138	2293

Even before SierraPine ceased providing rail service on June 3, 2004, most of the transportation needs of SierraPine's Ampine plant were met by trucks, which carry inbound raw materials and outbound finished product, mostly destined to the Los Angeles area, via State Highway 88, which generally parallels the Line between Martell and Ione, and State Highway 49, which runs north and south through Martell.² Before rail service ceased, the Ampine plant was served by approximately 1300 inbound and 850 outbound trucks per month. Since rail service ceased, the plant has been served by approximately 1300 inbound and 1000 outbound trucks per month, an increase of 150 trucks per month.

SierraPine believes that the vast majority of transportation needs of Landmark the only other shipper served by the Line since 2002, were also met by truck even while rail

¹ The numbers listed for "Ampine" are all outbound carloads of finished particleboard panels and shelving stock from SierraPine's Ampine plant. "Springfield" is a sister plant of Ampine located in Springfield, Oregon; the "Springfield" numbers reflect carloads of particleboard shipped to the Ampine plant by rail. The numbers for "Landmark" and "Fibreform" reflect carloads of medium-density fiberboard shipped to the fiberboard facility located on the Line that is now operated by Landmark and previously by Fibreform.

² Amador County is currently improving Highway 49 by constructing a six-mile bypass near Martell.

service was available: SierraPine never carried any outbound products from the Landmark facility by rail, while inbound, as indicated on the chart above, SierraPine carried a total of 183 cars to Landmark from January 2001 through May 2004 – an average of approximately one car per week.

In August 1999, SierraPine filed a petition to revoke the operating authority obtained by its notice of exemption, contending that its operations constituted switching and therefore not subject to Board jurisdiction. The Board denied this petition.

SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, STB Finance Docket No. 33679 (decisions served November 27, 2001 and August 22, 2002.)³

Despite substantial annual expenditures for maintenance, SierraPine experienced increasing difficulties with rail operations over the century-old Line. In November 2003, the California Public Utilities Commission (“CPUC”) advised SierraPine that two recent inspections had identified 123 “FRA defective conditions” on five miles of the Line and stated that SierraPine would have to develop an action plan and undertake immediate remedial action to avoid the civil penalties prescribed in 49 C.F.R. Part 213.15. Exhibit C. After receiving this letter, SierraPine met with representatives of CPUC and the Federal Railroad Administration (“FRA”) and proposed a five-year remediation plan. The CPUC and FRA representatives approved this plan and advised that compliance with it would be required for SierraPine to continue operating and to avoid civil penalties.

In February and March 2004, SierraPine experienced two major derailments. Sierra Pine finally concluded that the risk of further derailments, with the attendant risk

³ SierraPine filed but later dismissed a petition for judicial review of these decisions.

of injury and property damage, was too high, and discontinued operations on June 3, 2004. On July 7, 2004, SierraPine formally embargoed the Line.

Since June 3, 2004, SierraPine has met all of the transportation needs of its Ampine plant with truck transportation. SierraPine has also concluded that its Ampine plant will no longer transport any of its product by rail over the Line, because of the very high cost of that service, but will continue to use trucks to meet its transportation needs.

The costs of operating and maintaining the Line since 1999 are detailed in Mr. Atkinson's verified statement. In brief, the operating and maintenance costs and the capital costs (replacing ties, rails and other capital assets) have far exceeded the revenues derived from rail operations. From 1999 through June 2004, those costs have totaled at least \$1,628,649, exceeding total revenues (\$596,881) by \$1,031,768. These cost figures do not include substantial costs that were spent on both rail and non-rail activities but charged internally solely to the non-rail departments, and they do not include opportunity costs. The estimated operating, maintenance and capital costs for the period after June 2004 through 2010, which would include the costs associated with the CPUC/FRA required remediation plan, are more than \$6 million (including \$1,884,388 in the remainder of 2004); these exceed an optimistic estimate of revenues by more than \$4.8 million.

REASONS FOR THE REQUESTED EXEMPTION

Petitioners request exemption of their proposed discontinuance and abandonment from regulation under 49 U.S.C. §10903 in accordance with 49 U.S.C. §10502 and the rules applicable thereto at 40 C.F.R. §1121 and 59 C.F. R. §1152 and the Special Rules at 49 C.F.R. §1152.60. Petitioners submit that exemption of the transactions is clearly

warranted. The operating, maintenance and capital costs of the Line have far exceeded the revenues from operating the Line, and there is no reasonable prospect that those circumstances will improve. On the contrary, they would almost certainly worsen. SierraPine, one of the petitioners and the operator of the Line since 1999, has been almost the exclusive user of the Line and has decided to stop using rail service. Only one other shipper, Landmark Trim, has received rail service over the Line in recent years, for a relative handful of cars; all of Landmark Trim's outbound finished products, and most of its inbound shipments, were carried by truck even when rail service was available. Inasmuch as the per car costs of continuing rail service to that shipper would be astronomical, there is no reasonable alternative to abandonment.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope; or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

Those conditions are plainly met in this case. Detailed scrutiny of these transactions is not necessary to carry out the rail transportation policy. On the contrary, as the Board has found in many abandonment exemption cases, exemption would further that policy by minimizing the unnecessary expenses of filing formal applications for discontinuance and abandonment and would therefore reduce regulatory barriers to exit.

See 49 U.S.C. § 10101(2) and (7). Exemption would also foster sound economic conditions and efficient management by permitting SierraPine, with minimal regulatory burdens, to avoid the substantial costs of operating and maintaining a line having little demand for service and permitting permit Sierra Pacific to avoid the substantial opportunity costs of retaining such a line. 49 U.S.C. §10101(5) and (9). See also, e.g., STB Docket No. AB-55 (Sub-No. 653X), *CSX Transportation, Inc.—Abandonment Exemption—In Pike County, KY* (not printed), served September 13, 2004; STB Docket No. AB-33 (Sub-No. 172X), *Union Pacific Railroad—Abandonment Exemption—In Marshall County, KS* (not printed), served August 9, 2004. Other aspects of the rail transportation policy will not be affected adversely by the exemption.

The proposed transactions are also of limited scope. The Line at issue is only 12 miles in length and has had little traffic in recent years. In the past two years, it has served only two shippers, and the overwhelmingly predominant shipper has been the operator of the Line itself, SierraPine, which now seeks discontinuance authority and support's SPI's request for abandonment authority.

Finally, regulation is not needed to protect shippers from the abuse of market power. As noted, the predominant shipper, SierraPine, is one of the petitioners and has decided to use trucks to meet the transportation needs of its Ampine plant. The only other shipper, Landmark Trim, used only 77 railcars in 2003 (compared to SierraPine's 484) and 21 in 2004 (January through May) (compared to 114 for SierraPine). Both shippers have adequate transportation alternatives, as evidenced by the fact that both used trucks for most of their transportation needs even before rail service terminated. Martell

is served by two state highways, one of which, Highway 49, is being improved by the construction of a six-mile bypass near Martell.

ENVIRONMENTAL AND HISTORIC REPORTS

A combined Environmental Report and Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were submitted to the Board's Section of Environmental Analysis and served on all relevant federal, state and local agencies on October 22, 2004. As reported in that Report, Petitioners expect that the proposed transactions will result in no significant adverse effects on the human environment or on historic resources.

FEDERAL REGISTER NOTICE

A draft Federal Register Notice is attached to this petition as Exhibit D.

NEWSPAPER NOTICE

On October 22, 2004, Petitioners published in the Amador Ledger Dispatch, a newspaper of general circulation in Amador County, California, a newspaper notice pursuant to 49 C.F.R. §1105.12. A copy of that notice is attached as Exhibit E.

LABOR PROTECTION

The Line constitutes the entire line of railroad of SierraPine and the entire line of railroad of Sierra Pacific that is subject to STB jurisdiction.⁴ Following discontinuance and abandonment, no corporate affiliate of SierraPine or Sierra Pacific will continue

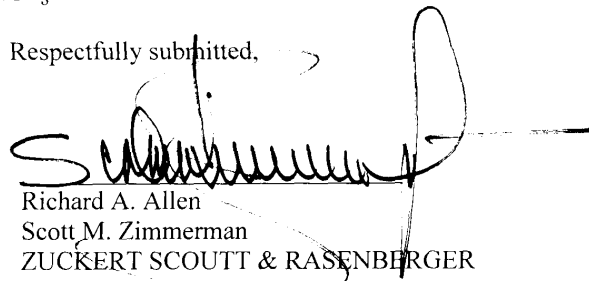
⁴ Sierra Pacific operates two other lines of railroad, both in California, as a private and contract carrier, not as a common carrier: a three-mile line in Plumas County, CA serving a Sierra Pacific lumber mill in Quincy, CA, and a 25-mile line between Susanville and Wendel in Lassen County, CA, leased from the Union Pacific Railroad, which provides private carriage to a Sierra Pacific mill in Susanville and contract carriage to a millwork plant in Susanville operated by Jeld-Wen. As recently determined by the Railroad

substantially similar rail operations over the Line, and no parent of either Petitioner will realize substantial financial benefits over and above relief from the burden of deficit rail operations by Petitioners. Under consistent Board policy, therefore, no employee protection conditions should be imposed on the transactions. *See, e.g.*, STB Docket No. AB-865X. *Honey Creek Railroad, Inc.—Abandonment Exemption—in Henry County, IN* (unpublished decision) (served August 20, 2004); *Wells, Addison & Gleton R. Corp.—Abandonment*, 354 I.C.C. 744 (1978).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the proposed transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 or to protect shippers from the abuse of market power, and the transactions are of limited scope. The Board should therefore grant petitioners' request to exempt the transactions from 49 U.S.C. § 10903.

Respectfully submitted,



Richard A. Allen
Scott M. Zimmerman
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Suite 700
Washington DC 20006
(202) 298-8660

Attorneys for SierraPine and Sierra Pacific
Industries.

Dated: November 12, 2004

Retirement Board, Sierra Pacific does not operate either of these lines as a common carrier subject to STB jurisdiction. *See* Exhibit F.

CERTIFICATE OF SERVICE

I certify that on November 12, 2004 a copy of the foregoing Petition For Exemption was served by first class U.S. mail, postage prepaid, upon each of the following:

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
415-703-2782

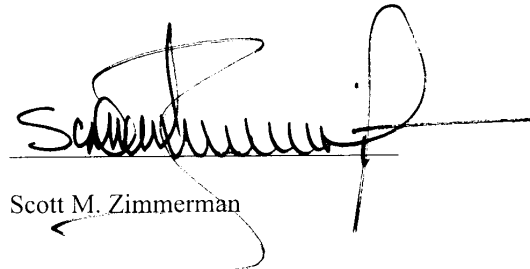
Chief Projects Analyst
Office of Planning and Research
P.O. Box 3044
Sacramento, California 95812

SDDCTEA
Attn: Railroads For National Defense
720 Thimble Shoals Blvd., Suite 130
Newport News, VA 23606-2574

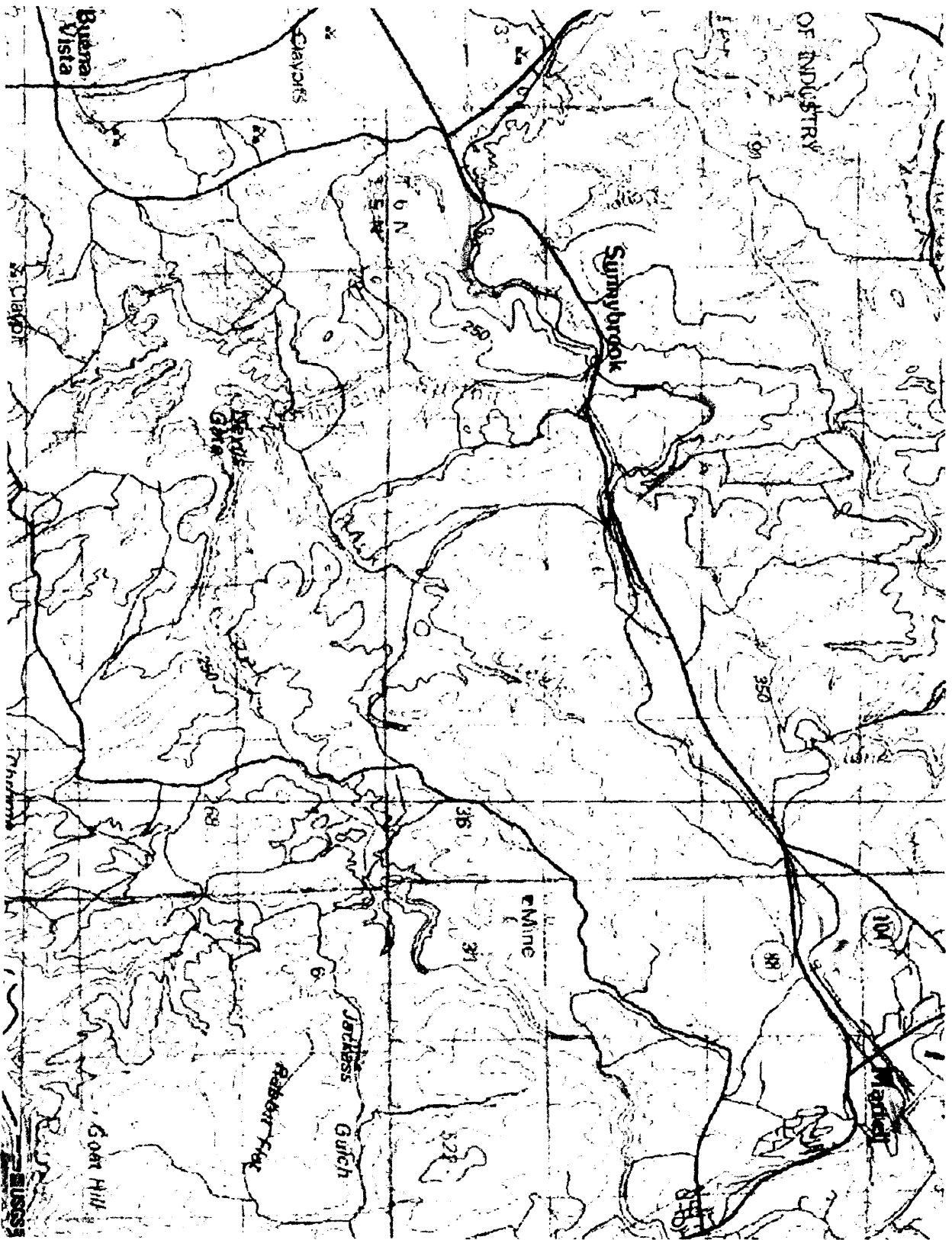
U.S. Department of Agriculture
Chief of the Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250-0003

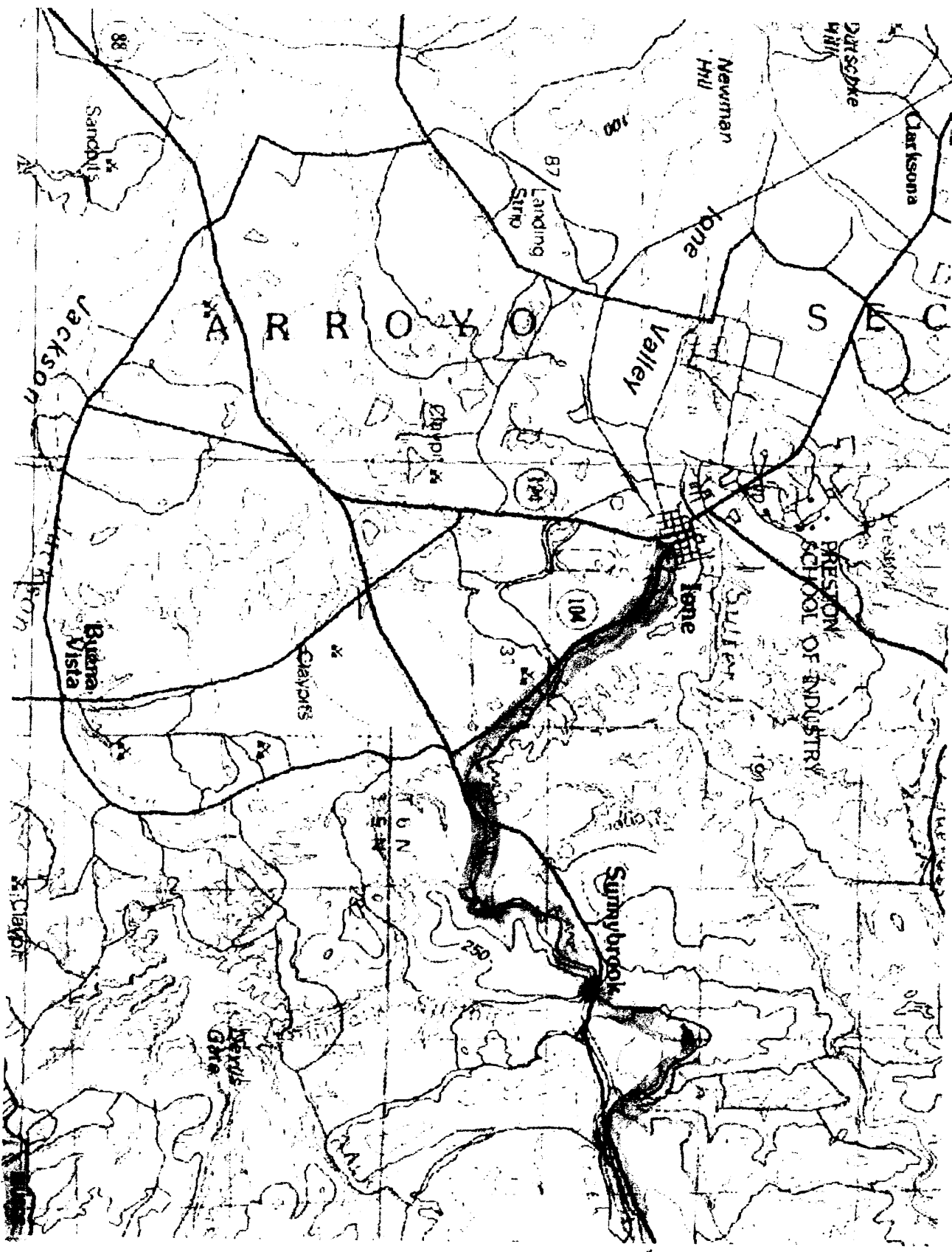
Chief of National Recreation and Trails
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, D.C. 20240-0001

Rose-Michele Weinryb, Esq.
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, D.C. 20036-1609



Scott M. Zimmerman





VERIFIED STATEMENT

OF

LAINE ATKINSON

My name is Laine Atkinson. I am the General Manager of the Ampine Division of SierraPine, a California limited partnership. My office is at 11300 Ridge Road, Martell, California 95654. I have been General Manager of the Ampine Division since September 1, 2003. My responsibilities during that time have included supervision of SierraPine's railroad operations over the 12-mile line between Martell and Lone, California ("the Line"), owned by Sierra Pacific Industries ("SPI"). I hold a Bachelor of Arts degree in Business Administration from Eastern Oregon State University in LaGrande, Oregon.

I am submitting this statement to provide information supporting the petition for exemption that SierraPine and SPI are submitting to the Surface Transportation Board for authority for SierraPine to discontinue rail operations over the Line and SPI to abandon the Line (STB Docket Nos AB-880X and AB-512X, respectively).

Background of the Line

The Line runs between Milepost 0.0 at Lone, CA, where it connects with a line of the Union Pacific Railroad, and Milepost 12.0 at Martell, a very small community in the

foothills of the Sierra Nevada Mountains, where it terminates. The Line is entirely in Amador County, and it runs generally eastward and climbs approximately 1200 feet from Lone to Martell. It traverses almost exclusively grazing land. It consists of a 100-foot-wide right-of-way, one trestle bridge, several spur tracks in Martell and two structures in Martell: a combined purchase order office/freight shed and a combined machine shop/roundhouse.

According to an article in the November-December 1973 issue of The Western Railroader, construction of the line commenced in 1906. It was initially operated as the Lone & Eastern Railroad and carried primarily gold ore and firebrick from Martell eastward and passengers, mail, groceries and animal feed from Lone westward. The Lone and Eastern soon failed and was taken over in 1909 by the Amador Central Railroad, which operated the Line until 1997. In later years, the Line also served lumber shippers, including a mill that was built in Martell in 1940, and the Amador Central Railroad was acquired and operated by several lumber companies, including Georgia Pacific Corporation from 1988 to 1997.

In 1997, SPI purchased Georgia Pacific's mill complex in Martell, including the Line. In that year, SPI shut down all mill operations except a particleboard plant, and rail operations over the Line ceased.

Operations by SierraPine

In May 1997, SPI sold the particleboard plant to SierraPine, a California limited partnership among Emmerson Investments, Inc., a California corporation, a general partner, SPI, Rockland Timber Co., a Delaware corporation, a general partner, and the principals of SPI and Timber Products Company. SierraPine now operates the plant as its

Ampine Division. SierraPine also entered into an agreement with SPI to lease and operate the Line for five years, which the parties extended for an additional five-year term on January 16, 2004. SierraPine did so primarily for the purpose of transporting some of its finished particleboard from its Ampine plant to Ione, where the cars were interchanged with Union Pacific. SierraPine has no other railroad operations.

SierraPine operated the Line between 1999 and June 3, 2004, sometimes referring to its rail operation as the Amador Foothills Railroad. Almost all of the traffic was outbound particleboard panels or shelving stock from SierraPine's Ampine plant. From time to time, SierraPine also transported to the Ampine plant a few carloads of inbound particleboard received from its sister plant in Springfield, Oregon. There is one other shipper facility that has received rail service from the Line since it has been operated by SierraPine, a plant at Martell that processes medium-density fiberboard, which is currently operated by Landmark Trim and previously by Fibreform. Occasionally, SierraPine would transport a few inbound railcars of medium-density fiberboard destined for Fibreform or Landmark Trim.

Since 1999 (and even when SierraPine operated rail service on the Line), nearly all of the Ampine plant's transportation needs have been met by truck. Trucks have carried both inbound raw materials and outbound finished product from the plant, mainly to destinations in the Los Angeles area, via State High 88, which generally parallels the Line, and State Highway 49, which runs north and south through Martell. Before rail service ceased on June 3, 2004, approximately 1300 inbound and 850 outbound trucks served the Ampine plant every month. After rail service ceased, approximately 1300 inbound and 1000 outbound trucks per month have served the plant, an increase of

approximately 150 trucks per month. Based on my observations, I am reasonably certain that the large majority of Landmark Trim's transportation needs were also met by trucks even before rail service ceased.

I set out below the total carloads transported over the Line from 1999 until rail service ceased on June 3, 2004. The figures for Springfield represent inbound particleboard received by the Ampine plant for processing into shelving and stepping products.

	1999	2000	2001	2002	2003	2004	Total
Ampine	193	360	484	432	484	117	2070
Fibreform	14	3					17
Springfield		6	16	1			23
Landmark			4	81	77	21	183
Totals	207	369	504	514	561	138	2293

As I mentioned above, the figures for "Ampine" represent SierraPine's own outbound carloads of particleboard panels or shelving stock; the figures for "Springfield" consist of particleboard inbound to SierraPine's Ampine plant; the figures for "Landmark" and "Fibreform" represent occasional inbound carloads of medium-density fiberboard destined to the facility operated now by Landmark Trim and previously by Fibreform.

In every year SierraPine operated the Line, its operating and maintenance expenses and capital expenditures for replacing rail, ties and other capital assets greatly exceeded the revenues generated by rail operations. These expenditures and revenues are set out below. The operating, maintenance and capital expense figures are conservative, because they do not include expenses benefiting both rail operations and other SierraPine

operations at Martell, which were generally charged in their entirety to the non-rail departments. These included, for example, equipment rentals for equipment that was used for both rail and non-rail operations. With those qualifications, the expenditures and revenues for rail operations from 1999 through June 3, 2004 were:

Year	Oper./Maint. Cost	Capital	Total Cost	R.R. Revenue	Net Gain/ (Loss)
1999	\$258,619	\$20,240	\$278,859	\$55,800	(\$223,059)
2000	\$218,970	\$25,399	\$244,369	\$93,450	(\$150,919)
2001	\$211,791	\$27,637	\$239,428	\$130,256	(\$109,172)
2002	\$311,027	\$0	\$311,027	\$134,738	(\$176,289)
2003	\$262,919	\$0	\$262,919	\$146,065	(\$116,854)
2004 (thru 6/30)	\$154,194	\$137,853	\$292,047	\$36,572	(\$255,475)

Despite these substantial expenditures, SierraPine experienced increasing difficulties in operating the Line. These resulted primarily from two circumstances: the condition of the roadbed and the condition of the rail. Heavy seasonal rains and lack of adequate drainage in some areas created a soft roadbed that allowed the tracks to undulate when traversed by trains, which loosened spikes and accelerated metal fatigue in the rail by over-flexing it. Also, almost all the rail on the Line is 70-pound or 80-pound rail manufactured in the late 1800s or early 1900s. This was too light for SierraPine's needs, which generally warranted 110-pound or heavier rail.

As a result of these conditions, we experienced two major derailments in February and March 2004. These both occurred when the train was operating at less than ten miles per hour. The cost of repairing the track from these two derailments was \$133,983.41; these are included in the capital costs for 2004 stated above.

Representatives of the California Public Utilities Commission (CPUC) and the Federal Railroad Administration periodically inspected the Line. On November 6, 2003, I received a letter from the CPUC, attached as Exhibit 1, advising that two recent inspections had "identified 123 FRA defective conditions on 5 miles of track." This letter requested that SierraPine develop a remediation plan of action and advised: "Immediate remedial action must be taken along with your action plan in order to avoid civil penalties as prescribed in Title 49 CFR part 213.15." We took a number of steps in response to this letter and developed a five-year remediation plan, which I submitted to the CPUC on February 26, 2004 (Exhibit 2), which plan was subsequently approved.

By late April 2004, however, SierraPine concluded that continued worsening of the condition of the track and roadbed was creating too great a risk of further derailments and the attendant risks of personal injury and property damage, and on or about April 30, 2004, I advised the general manager of the Landmark Trim facility that we would be terminating rail operations on May 31, 2004. The last carload was actually moved on June 3, 2004. On July 7, 2004 we requested, and the Association of American Railroads issued, a formal embargo of the Line.

SierraPine has also concluded that it would not continue to use the Line to transport materials to and from its plant at Martell in view of the excessive cost of rail operations and of the remediation plan required by CPUC and FRA, but will rely entirely

on trucks for all of its transportation needs. I set out below my estimate of the annual total expenditures for operations, maintenance and capital for the years 2004 through 2010 if rail operations continued, as well as estimated revenues in those years based on the very optimistic and unlikely assumption that revenues would increase five percent annually from 2003 levels.¹ The capital costs reflect our estimate of complying with the remediation plan approved and required by CPUC and FRA, and are based on replacing 10 percent of our cross-ties each year and bringing the roadbed up to minimum standards. These costs do not reflect the expense of repairing damage from further derailments, which would very likely occur as we brought the entire Line up to minimum standards.

Year	Oper./Maint. Cost	Capital	Total Cost	R.R. Revenue	Net Gain/ (Loss)
2004 (estimated year total)	\$308,388	\$1,540,000	\$1,848,388	\$153,368	(\$1,695,020)
2005	\$323,807	\$336,600	\$660,407	\$161,037	(\$499,371)
2006	\$339,998	\$336,600	\$676,598	\$169,088	(\$507,509)
2007	\$356,998	\$336,600	\$693,598	\$177,543	(\$516,055)
2008	\$374,848	\$336,600	\$711,448	\$186,420	(\$525,027)
2009	\$393,590	\$336,600	\$730,190	\$195,741	(\$534,449)
2010	\$413,269	\$336,600	\$749,869	\$205,528	(\$544,341)

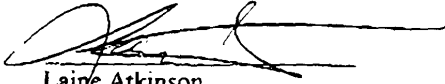
¹ These revenue projections are almost certainly unrealistically high, because the vast majority of rail shipments, and thus of the past revenues from which these projections were derived, originated from SierraPine itself, which has determined that it intends not to continue using rail service. If forced to continue operating rail service solely for the occasional use of Landmark Trim, revenues would be a small fraction of the listed projection.

In 2003 and 2004, SierraPine had only two employees whose duties primarily involved rail operations. One left SierraPine's employment in August 2003, and the other left in June 2004.

VERIFICATION

I, Laine Atkinson, verify under penalty of perjury, that the foregoing statement is true and correct. I further certify that I am qualified and authorized to file this statement.

Executed this 10th day of November, 2004


Laine Atkinson



State of California / Public Utilities Commission / Rail Safety

Date: November 6, 2003

Mr. Lane Atkinson
Railroad Operations / AMC
11300 Ridge Road
Martell, CA 95654

Dear Mr. Atkinson,

Past inspections have identified a high number of Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) defective conditions existing on and around your track between Martell and Ione. The most recent inspections on October 29, 2003 (report 97) and November 5, 2003 (report 101) identified 123 FRA defective conditions on 5 miles of track. Report 97 identified 23 defective conditions on two miles of track that was walked between milepost zero and milepost two. Report 101 covered three miles of track and identified 100 FRA defective conditions. The conditions on these two reports represent a total of five miles, leaving seven miles for the railroad to complete a thorough inspection and make proper repairs. The defective conditions on the five miles are as follows:

1. Defective Tie Conditions	53
2. Center Broken Joint Bars	44
3. Switch Related Defects	9
4. Defective Rails	6
5. Ballast Conditions	2
6. Vegetation Conditions	3
7. Gage	1
8. Drainage	5

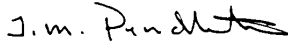
The above described conditions are a sample of the types and number of defective conditions existing in your track structure, there are other conditions such as the record keeping and roadway worker requirements that must be addressed to provide for a safe operation over that track. Keeping in mind that each defective tie condition may represent a cluster of defective ties requiring multiple ties at each condition. The area between milepost nine and milepost two (seven miles) has not been thoroughly inspected and must be inspected by a qualified inspector to identify and document all of the defective conditions in that area.

The FRA and CPUC are committed to partnering with Railroads in an effort to improve safety. Per conversations with Mr. Dave Scott and Mr. Winston Deason, the following is a request for an action plan. The action plan is not a form of immediate remedial action but rather a delay of enforcement action on the part of the State and Federal Government. Immediate remedial action must be taken along with your action plan in order to avoid civil penalties as prescribed in Title 49 CFR part 213.15.

The action plan must be specific in describing the immediate remedial action taken and the longer-term action that will be used to maintain the track in compliance with all FRA and CPUC requirements. Please keep in mind that the FRA and CPUC regulations are minimum requirements and should not be used as a maintenance guideline. Action plans are monitored on a regular basis by FRA and CPUC inspectors and must be adhered to in order to avoid the civil penalty that has been recommended against your company.

Please return your plan to me within 20 days of the date of this letter.

Sincerely,



T.M. Pendleton
Track Inspector / CPUC / Rail Safety
515 "L" Street Suite 1119
Sacramento CA 95814
(916) 812-0159

cc: R.G. Webb / Rail Safety Supervisor North
J.P. Farley / CPUC Senior Operations Transportation Supervisor
B.S. Hess / FRA R7 Track Specialist

Requirements For Action Plan AMC 2003

Item 1

Numerous defective tie conditions existing throughout the entire track.

Action Plan Requirements

- (A) Immediate remedial action to bring track into compliance with all FRA requirements, including a plan to outline the amount of ties to be installed this year.
- (B) Long term maintenance objectives as to the number of ties to be installed, the location of ties to be installed, and the dates of installation, outlined as a five-year plan.

Item 2

Center cracked or broken joint bars.

Action Plan Requirements

- (A) Identify all non-complying locations throughout entire line and document on weekly track inspection report.
- (B) Who will replace defective bars and when will bars be replaced. Bars must be replaced within 30 days from the time they are identified, including bars identified by FRA.

Item 3

Insufficient ballast and track surfacing needs.

Action Plan Requirements

- (A) Some sections of track need track surfacing with a machine capable of squeezing the rock to the proper compaction under the tie, correcting center-bound ties that are currently existing and preventing future occurrences.
- (B) Action plan must include one year surfacing plan and five year surfacing plan to eliminate all center bound track and marginal cross level and alinement conditions.

Item 4

Failure to keep records as required.

Action Plan Requirements

- (A) Produce list of qualified designated individuals as outlined in Title 49 CFR Part 213.7 (A)(3).
- (B) Produce a thorough track inspection report by a qualified inspector on a weekly basis.
- (C) Produce a current roadway worker program with all supporting documentation, specifically a list of individuals with their training and qualifications.

EXHIBIT D

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-512X

**SIERRA PACIFIC INDUSTRIES—ABANDONMENT EXEMPTION—
IN AMADOR COUNTY, CA**

STB Docket No. AB-880X

**SIERRAPINE—DISCONTINUANCE EXEMPTION—
IN AMADOR COUNTY, CA**

**NOTICE OF PETITION FOR EXEMPTION TO
ABANDON AND DISCONTINUE SERVICE**

On November 12, 2004, Sierra Pacific Industries and SierraPine filed with the Surface Transportation Board a petition for exemption for the abandonment of and discontinuance on a line of railroad extending from milepost 0.0 at Ione, CA to the end of the line at milepost 12.0 at Martell, CA, which traverses through U.S. Postal Service Zip Codes 95640 and 95654 in Amador County, CA. The line for which the exemption request was filed included stations at Ione and Martell.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The line to be abandoned and discontinued constitutes the entire railroad line of Sierra Pacific Industries, Inc. and SierraPine subject to the jurisdiction of the Surface Transportation Board. Accordingly, no employee protective conditions will be imposed.

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

PARTICLEBOARD

MARTELL, CA
ADEL, GA
MONCURE, NC
SPRINGFIELD, OR

MDF

ROCKLIN, CA
MONCURE, NC
MEDFORD, OR

MDF MOULDING

SACRAMENTO, CA

THIN MDF

ROCKLIN, CA

PLYVENEER & PLYCORR

SPRINGFIELD, OR

November 1, 2004

Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, NW, Suite 700
Washington, D.C. 20006

Re: Amador Foothills Railroad

Dear Mr. Zimmerman:

Attached is the SPI/SierraPine notice pertaining to the filing of the petition for exemption. The notice was published in the Amador Ledger Dispatch on October 22, 2004.

Sincerely,



Wanda Dani
Administrative Assistant

/wd

Attachment

Ledger Dispatch, Amador County, Calif.

Legals 890

PUBLIC NOTICE

SPI/SIERRAPINE NEWSPAPER
NOTICE

Sierra Pacific Industries ("SPI") and SierraPine hereby give notice that on or about November 8, 2004 they intend to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, permitting the abandonment by SPI of, and the discontinuance of service by SierraPine over, a 12-mile line of railroad between railroad milepost 0.0, near Lone, CA and railroad milepost 12.0, near Martell, CA, which traverses United States Postal Service ZIP Codes 95640 and 95654 in Amador County, California. The abandonment proceeding has been docketed as No. AB-512X and the discontinuance proceeding has been docketed as No. AB-880X.

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEA, Surface Transportation Board, Washington, DC 20423 or by calling SEA at 202-927-6211.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, NW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Congressional and Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative, Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger LLP, 888 Seventeenth Street NW, Suite 700, Washington, D.C. 20006.

October 22, 2004-889

FEB 27 2004

EMPLOYER STATUS DETERMINATION

Quincy Railroad Company

Sierra Pacific Industries, Incorporated, Quincy Railroad Division

SierraPine LLP

This is the determination of the Railroad Retirement Board concerning the status of Sierra Pacific Industries, Incorporated, Quincy Railroad Division (Sierra Pacific); the Quincy Railroad Company (Quincy Railroad); and Sierra-Pine LLP, as employers under the Railroad Retirement Act (45 U.S.C. 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The Quincy Railroad has previously been determined to be a covered employer (BA 3731) under the Railroad Unemployment Insurance Act and the Railroad Retirement Acts of 1974 and 1937, with service creditable from November 1917 to date. The status of Sierra Pacific and Sierra-Pine have not previously been the subject of formal consideration by the Board.¹

Sierra Pacific is a privately held California corporation formed in 1969 which owns timber land and lumber mills. See: "Profile of Sierra Pacific Industries", George Draffan, Endgame Corporate Profile website. Sierra Pacific ranks among the Forbes 500 list of private corporations, and has over 3,000 employees. The company's own internet site states that it owns approximately 1.5 million acres, making Sierra Pacific the largest private timberland owner in North America. The evidence is that Sierra Pacific has also acquired three lines of railroad: the Quincy Railroad, the Amador Central Railroad, and the Susanville-Wendel line.

In a letter dated December 17, 2002, Sierra Pacific stated that in May 1976, it purchased a lumber mill located in Quincy, California from the DiGiorgio Lumber Company. Sierra Pacific acquired in that transaction the plant itself, title to the 60 acre mill site, and the Quincy Railroad Company. The Quincy Railroad consisted of three miles of track from the lumber mill at Quincy to a junction with a trunk line now operated by the Union Pacific Railroad, the entire line lying within Plumas County. Because there was no other shipper on the line other than the lumber mill, DiGiorgio Lumber and Sierra Pacific believed the line to be a private track, and did not seek approval of the sale by the former Interstate Commerce Commission. On December 21, 1995, Sierra Pacific filed a certificate of ownership with the California Secretary of State which certified as sole owner that it had merged Quincy Railroad into Sierra Pacific. Sierra Pacific sought no approval of this transaction from the ICC or the Surface Transportation Board (STB) as well. Sierra Pacific continues to use the line to bring lumber from the mill to the junction with the Union Pacific, operating as the Quincy Railroad division of Sierra Pacific. No notices have ever been filed with the STB regarding Sierra Pacific's conduct of this operation.

¹ Both Sierra Pacific and SierraPine have been the subject of prior coverage reviews by the Audit and Compliance section of the Board's Bureau of Fiscal Operations which were closed without referral to the members of the Board for decision.

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

In a separate letter also dated December 17, 2002, Sierra Pacific stated that on April 21, 1986 the Quincy Railroad began leasing from the Southern Pacific Transportation Company (now the Union Pacific Railroad) a 25 mile-long rail line running from Susanville to Wendel in Lassen County, California. The line serves a lumber mill owned by Sierra Pacific and a millwork plant operated by Jeld-Wen, both located in Susanville, and interchanges with the Union Pacific at Wendel. Following merger of Quincy Railroad into Sierra Pacific in December 1995, operation of the line has been conducted by the Quincy Railroad division of Sierra Pacific. There is no physical connection between the Susanville-Wendel rail line and the Quincy rail line, which lie approximately 30 miles apart. There is no record that the ICC ever approved the original lease between the Southern Pacific and Quincy Railroad, or that the STB has ever been notified of the continued lease between the Union Pacific and Sierra Pacific.

In Surface Transportation Board (STB) Finance Docket No. 33378, decided April 3, 1997, Sierra Pacific did file a verified notice of exemption to acquire and operate an approximately 12 mile line of track between Lone and Martel, California formerly owned and operated by the Amador Central Railroad Company. See: Sierra Pacific Industries; Acquisition and Operation Exemption—Amador Central Railroad Company 62 Fed. Reg. 17284, April 9, 1997. By letter dated August 19, 1997, Sierra Pacific notified the Board that when it acquired the Amador Central from its prior owner, Georgia Pacific Corporation, it hired none of the former Amador Central employees, and did not intend to conduct rail operations itself. On November 7, 1997, the Board determined that following sale of the line to Sierra Pacific, Amador Central "no longer possesses the characteristics of an operating railroad company" and therefore ceased to be an employer under the Acts. B.C.D. 97-101, *Amador Central Railroad Company*. No determination was rendered by the Board regarding the status of Sierra Pacific.

Consistent with its August 1997 letter to the Board, Sierra Pacific filed a notice with the STB that it intended to sell the Amador Central line to the Sierra Railroad, an unrelated short line. See: Sierra Railroad Company—Acquisition and Operation Exemption—Sierra Pacific Industries 62 Fed. Reg. 63747, December 2, 1997. However, the sale was not completed. Sometime during 1998, SierraPine LLP, which is evidently a California limited partnership between Rockland Timber Co., a Delaware corporation, Sierra Pacific, and others², purchased a particle board plant located in Martel. On

² SierraPine is a privately held company owned by the principals of Timber Products Company and Sierra Pacific Industries. "Weyerhaeuser to sell composite products facilities, ply-veneer plant to SierraPine Limited," Business Wire, April 13, 1999.

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

December 15, 1998, SierraPine leased the line of the Amador Central from Sierra Pacific. SierraPine filed a notice of this transaction with the STB. See SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, 63 Fed. Reg. 68505, December 11, 1998. Later, SierraPine sought to revoke the STB determination that the line was subject to its jurisdiction on grounds that the line of rail was actually a private switching line. Id., November 21, 2001. The STB denied the petition to revoke, and subsequently denied reconsideration of the denial. Id., August 22, 2002.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

Decisions of the Board in prior cases have concluded that where a short line of track is operated as a common carrier, the operator is a rail carrier employer under the Acts. B.C.D. 96-19 *GWJ Switching Services, L.P.* Whether the operator owns the rail line, or leases the line from another company does not affect the outcome, but where the operator does not hold itself out as a common carrier, the Board has concluded that the track is operated as a private carrier, and consequently is not a covered rail carrier employer. See, e.g., B.C.D. 94-29 *Hardin Southern Railroad Company*; B.C.D. 94-105.2 *Great Miami & Western Railway*.

Regulations of the Board at 20 CFR 202.2 provide that "Any company or person principally engaged in carrier business is an employer" within the meaning of section 1(a)(1) of the RRA and 1 of the RUIA. Where the principal business of a company is not carrier business, Board regulations further provide that the Board will consider whether some identifiable and separable enterprise is considered to be the employer. See: 20 CFR 202.3(a). That regulation further provides that in determining whether a segregable portion of a business may be determined to be a rail carrier employer, the Board will consider evidence such as:

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

- (1) The primary purpose of the company or person on and since the date it was established;
- (2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
- (3) The amount of its carrier business and the ratio of such business to its entire business;
- (4) Whether its carrier business is a separate and distinct enterprise.

Where a line of railroad is owned by one entity but operated as a rail carrier by a second, unrelated entity, the RRA, the RUIA and the agency's regulations do not directly address the status under the Acts of the lessor company as an employer. In November 2000, the Board defined the circumstances under which it would consider that the lessor-owner of a rail line leased to another would be a rail carrier employer under the Acts. See Board Coverage Decision 00-47, *Railroad Ventures, Inc.*, (reconsideration decision). Pursuant to that decision, the Board will determine the lessor to be an employer unless:

- (1) the lessor does not have as a primary purpose to profit from railroad activities;
- (2) the lessor does not operate or retain the capacity to operate the rail line; and
- (3) the operator of the rail line is already a covered employer under the RRA and RUIA. See: B.C.D. 02-13, *Bellingham International Railroad, LLC* (decision on reconsideration).

Applying these standards to the companies under consideration here, the evidence regarding the Quincy Railroad is that it merged with its parent corporation Sierra Pacific in December 1995 and ceased to exist as a corporate entity. Regulations of the Board provide that the status of a company as an employer covered by the Acts ends "whenever such company or person loses any of the characteristics essential to the existence of an employer status." 20 CFR 202.11. Accordingly, the Board determines

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

that the status of the Quincy Railroad as a covered employer ended December 21, 1995, when it lost its corporate identity. Moreover, from at least the time of sale to Sierra Pacific in May 1976 and continuing to the present, the Quincy lumber mill owned by Sierra Pacific has been the only shipper on the line. The switching operation conducted by the Quincy Railroad division of the Sierra Pacific is in reality the movement of rail cars for itself over track it owns to a junction siding connecting to a trunk carrier. The Board concludes that effective December 22, 1995, Sierra Pacific has engaged in private carriage over the former Quincy Railroad which is not rail carrier service within the meaning of the RRA and RUIA.

As noted above, the Board previously determined that Amador Central Railroad Company ceased to be an employer under the Acts effective with the sale to Sierra Pacific of all its rail assets March 31, 1997. There is no evidence contradicting Sierra Pacific's assertion at the time of sale that it would not operate the Amador Central line itself. Rather, the record shows Sierra Pacific immediately sought to resell the line to a rail carrier. When that transaction failed, Sierra Pacific then entered into the operating lease with SierraPine. However, since at least the time of the SierraPine purchase of the particle board plant in Martel, the Amador Central rail line has served two shippers. The record also shows that over the objection of SierraPine, the STB has twice determined that SierraPine's operation of the Amador Central rail line remains subject to STB jurisdiction. In the words of the STB:

Here, SierraPine sought and acquired authority via exemption to provide common carrier service over a line that has historically been operated as a regulated line of railroad. Petitioner cannot unilaterally extinguish its common carrier obligation on the basis that it did not in the past, and does not now, require regulatory authority to conduct what it describes as its primarily private carrier, switching operations. SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, August 26, 2002.

As the matter stands, the STB has determined, reviewed and re-determined that SierraPine is a rail carrier subject to its jurisdiction.³ Of course, section 1(a)(i) of the

³ SierraPine appealed the decision of the STB to the United States Court of Appeals for the District of Columbia Circuit. Sierra Pine v. Surface Transportation Board, No. 02-1327, (U.S. Court of Appeals, D.C. Circuit, filed October 24, 2002). The Clerk of the Court of Appeals advises that on September 8, 2003, the Court granted the motion of petitioner SierraPine to dismiss the case.

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

RRA and section 1 of the RUIA define a covered rail carrier employer as "any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code". Based on the STB decision that SierraPine is a rail carrier with respect to the operation of the Amador Central line under lease, the Board therefore determines that SierraPine is a rail carrier employer under the RRA and RUIA, effective December 15, 1998, the date SierraPine assumed operations on the Amador Central line. However, it is clear that SierraPine is primarily in the lumber business rather than a common carrier by rail. Pursuant to section 202.3(a) of the Board's regulations regarding segregation of the rail carrier portion of a company's business (20 CFR 202.3(a)), SierraPine is an employer only with respect to its operation of the former Amador Central rail line.

It remains to consider the status of Sierra Pacific as operator of the Susanville-Wendel line, and as owner-lessor of the Amador Central. The circumstances of Sierra Pacific's operation of the Susanville-Wendel line are similar to those of SierraPine's operation of the former Amador Central in that both lines serve another shipper in addition to the plant of the rail line operator. Unlike the Amador Central, however, at the time of transfer of ownership, the Susanville-Wendel rail line was only a spur of a trunk rail line rather than a complete short line railroad. Although no decision of the former Interstate Commerce Commission has been located, the transfer of ownership from the Southern Pacific Railway to one of the two shippers on the line would appear to be an abandonment, potentially within jurisdiction of the ICC. See, The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—In Lyon County, KS, Docket AB-52 (Sub-No. 71X)(June 17, 1991). Absent a decision to the contrary by the ICC or STB, in the Board's view, the abandonment by the Southern Pacific and subsequent Sierra Pacific operation of the Susanville-Wendel rail line for itself and Jeld-Wen renders the operation private rather than common carriage. An operator of a rail line as a private carrier is not a rail carrier employer under the Acts. *Hardin Southern Railroad Company, supra.*

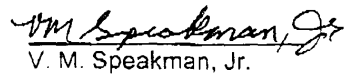
The last matter for consideration is the status of Sierra Pacific as an employer by reason of its lease of the Amador Central line to SierraPine. The Board is satisfied that the *Railroad Ventures* factors noted above are met. The size of Sierra Pacific's lumber business in relation to the rail line, and the location of its mill on the line evidence that the primary purpose for obtaining the Amador Central was to maintain rail access to the mill, not to profit from railroad activities. Under the second factor, it is noteworthy the

Quincy Railroad Company
Sierra Pacific Industries, Incorporated, Quincy Railroad Division
SierraPine LLP

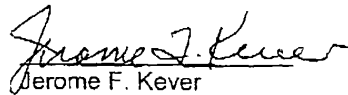
STB determined SierraPine to be a rail carrier on the basis of STB's analysis of the lease as leaving the lessor without recourse to operate the line itself upon lessee SierraPine's default. See: SierraPine—Lease and Operation Exemption—Sierra Pacific Industries, Finance Docket No. 33679, August 26, 2002. The Board defers to the STB's finding that Sierra Pacific does not retain the capacity to operate the Amador Central line itself. Under the final *Railroad Ventures* factor, the Board has with this decision determined that SierraPine is an employer with respect to operation of the line. As all three of the factors required by *Railroad Ventures* are present, the Board consequently determines that Sierra Pacific is not a lessor rail carrier employer under the Acts.



Michael S. Schwartz



V. M. Speakman, Jr.



Jerome F. Kever